

NATURAL RESOURCES CODE  
CHAPTER 134. TEXAS SURFACE COAL MINING AND RECLAMATION ACT  
SUBCHAPTER A. GENERAL PROVISIONS

Sec. 134.001. SHORT TITLE. This chapter may be cited as the Texas Surface Coal Mining and Reclamation Act.  
Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.002. FINDINGS AND DECLARATION OF POLICY. The legislature finds and declares that:

(1) the Congress of the United States has enacted the federal Act, which provides for the establishment of a nationwide program to regulate surface coal mining and reclamation and which vests exclusive authority in the Department of the Interior over the regulation of surface coal mining and reclamation in the United States;

(2) Section 101 of the federal Act contains the finding by Congress that because of the diversity in terrain, climate, biologic, chemical, and other physical conditions in areas subject to mining operations, the primary governmental responsibility for developing, authorizing, issuing, and enforcing regulations for surface mining and reclamation operations subject to that Act should rest with the states;

(3) Section 503 of the federal Act provides that each state may assume and retain exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in that state by obtaining approval of a state program of regulation that demonstrates that the state is able to carry out the provisions and meet the purposes of that Act;

(4) Section 503 of the federal Act further provides that a state wishing to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state must have a state law that provides for the regulation of surface coal mining and reclamation operations in accordance with that Act; and

(5) this state wishes to assume exclusive jurisdiction over the regulation of surface coal mining and reclamation operations in the state under the federal Act.  
Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.003. PURPOSES. It is the purpose of this chapter:

(1) to prevent adverse effects to society and the environment from unregulated surface coal mining operations as defined by this chapter;

(2) to assure that the rights of surface landowners and other persons with a legal interest in the land or appurtenances to the land are protected from unregulated surface coal mining operations;

(3) to assure that surface coal mining operations are conducted in a manner that will prevent unreasonable degradation of land and water resources;

(4) to assure that reclamation of all land on which surface coal mining takes place occurs as contemporaneously as practicable with the surface coal mining, recognizing that extracting coal by responsible mining operations is an essential and beneficial economic activity;

(5) to assure that the coal supply essential to this state's energy requirements and to its economic and social well-being is provided and to strike a balance between environmental protection and agricultural productivity and this state's need for coal as an essential source of energy; and

(6) to promote the reclamation of mined areas left without adequate reclamation before the enactment of the federal Act and that continue, in their unreclaimed condition, substantially to degrade the quality of the environment, prevent or damage the beneficial use of land or water resources, or endanger the health or safety of the public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.004. DEFINITIONS. In this chapter:

(1) "Affected person" means a person having an interest that is or may be affected.

(2) "Alluvial valley floors" means the unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities. The term does not include upland areas that are

generally overlaid by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation, or windblown deposits.

(3) "Applicant" means a person or other legal entity seeking a permit from the commission to conduct surface coal mining activities or underground mining activities under this chapter.

(4) "Approximate original contour" means the surface configuration achieved by backfilling and grading the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land before mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated.

(5) "Coal" means all forms of coal and includes lignite.

(6) "Coal exploration operations" means the substantial disturbance of the surface or subsurface for or related to the purpose of determining the location, quantity, or quality of a coal deposit.

(7) "Commission" means the Railroad Commission of Texas.

(8) "Federal Act" means the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. Section 1201 et seq.).

(9) "Imminent danger to the health or safety of the public" means the existence of a condition or practice or a violation of a permit or other requirement of this chapter in a surface coal mining and reclamation operation that could reasonably be expected to cause substantial physical harm to persons outside the permit area before the condition, practice, or violation can be abated. A reasonable expectation of death or serious injury before abatement exists if a rational person, subjected to the same conditions or practices giving rise to the peril, would not expose himself to the danger during the time necessary for abatement.

(10) "Operator" means a person engaged in coal mining who removes or intends to remove more than 250 tons of coal from the earth by coal mining within 12 consecutive months in one location.

(11) "Other minerals" means clay, stone, sand, gravel, metalliferous and nonmetalliferous ores, and other solid materials or substances of commercial value excavated in solid form from natural deposits on or in the earth, exclusive of coal and those minerals that occur naturally in liquid or gaseous form.

(12) "Permit" means a permit to conduct surface coal mining and reclamation operations or underground mining operations issued by the commission.

(13) "Permit area" means the area of land indicated on the approved map submitted by the operator with the operator's application, which area of land must be covered by an operator's bond as required by Subchapter F and readily identifiable by appropriate markers on the site.

(14) "Permit holder" means a person holding a permit to conduct surface coal mining and reclamation operations or underground mining activities under this chapter.

(15) "Person" means an individual, partnership, society, joint-stock company, firm, company, corporation, business organization, governmental agency, or any organization or association of citizens.

(16) "Prime farmland" means land that the commission determines meets the criteria prescribed by the secretary of agriculture and published in the Federal Register, including moisture availability, temperature regime, chemical balance, permeability without regard to annual mean soil temperatures, surface layer composition, susceptibility to flooding, and erosion characteristics, and that historically has been used for intensive agricultural purposes. Land has not historically been used for the production of cultivated crops if:

(A) the land has been used as woodland or rangeland; or

(B) the only cultivation has been disking to:  
(i) establish or help maintain bermuda grass used as forage; or

(ii) plant oats or rye for quick cover, to be used as forage and not as a grain crop.

(17) "Secretary of agriculture" means the secretary of the United States Department of Agriculture.

(18) "Secretary of the interior" means the secretary of the United States Department of the Interior.

(19) "Surface coal mining and reclamation operations" means surface coal mining operations and the activities necessary and incidental to the reclamation of those operations.

(20) "Surface coal mining operations" means:

(A) activities conducted on the surface of land in connection with a surface coal mine or subject to the requirements of Section 134.015 incidental to an underground coal mine, including excavation for the purpose of obtaining coal, including such common methods as contour, strip, auger, mountaintop removal, box cut, open pit, and area mining, the use of explosives and blasting, and in situ distillation or retorting, leaching or other chemical or physical processing, and the cleaning, concentrating, or other processing or preparation, loading of coal at or near the mine site; excluding the extraction of coal incidental to the extraction of other minerals where the coal does not exceed 16-2/3 percent of the total tonnage of coal and other minerals removed annually for purposes of commercial use or sale or coal explorations subject to this chapter; and

(B) the areas on which those activities occur or where those activities disturb the natural land surface, areas adjacent to land the use of which is incidental to any of those activities, all land affected by the construction of new roads or the improvement or use of existing roads to gain access to the site of those activities and for haulage, and excavations, workings, impoundments, dams, ventilation shafts, entryways, refuse banks, dumps, stockpiles, overburden piles, spoil banks, culm banks, tailings, holes or depressions, repair areas, storage areas, processing areas, shipping areas, and other areas on which are sited structures, facilities, or other property or materials on the surface, resulting from or incident to those activities.

(21) "Unwarranted failure to comply" means the failure of a permit holder to prevent the occurrence of any violation of the permit holder's permit or any requirement of this chapter due to indifference, lack of diligence, or lack of reasonable care, or the failure to abate any violation of the permit holder's permit or this chapter due to indifference, lack of diligence, or lack of reasonable care.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(a), eff. Sept. 1, 1997.

Sec. 134.005. EXEMPTIONS. (a) This chapter does not apply to the extraction of coal:

(1) by a landowner for the landowner's own noncommercial use from land owned or leased by the landowner; or

(2) incidental to federal, state, or local government-financed highway or other construction under commission rules.

(b) Subsection (a)(1) does not exempt the noncommercial production of coal by in situ distillation or retorting, leaching, or another chemical or physical process or preparation.

(c) This chapter does not apply to surface coal mining and reclamation operations in existence before August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 25.01(b), eff. Sept. 1, 1997.

Sec. 134.006. WATER RIGHTS. This chapter does not affect the right of a person under other law to enforce or protect the person's interest in water resources affected by a surface coal mining operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.007. CONFLICT OF INTEREST; OFFENSE. (a) An employee of the commission commits an offense if the employee knowingly:

(1) performs a function or duty under this chapter; and

(2) has a direct or indirect financial interest in an underground or surface coal mining operation.

(b) An offense under this section is punishable by:

(1) a fine of not more than \$2,500;

(2) imprisonment for not more than one year; or

(3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,

1995.

Sec. 134.008. APPLICABILITY TO GOVERNMENTAL UNITS. An agency, unit, or instrumentality of federal, state, or local government, including a publicly owned utility or publicly owned corporation of federal, state, or local government, that proposes to engage in surface coal mining operations that are subject to this chapter shall comply with this chapter.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(c), eff. Sept. 1, 1997.

SUBCHAPTER B. POWERS AND DUTIES OF COMMISSION

Sec. 134.011. GENERAL AUTHORITY OF COMMISSION. To accomplish the purposes of this chapter, the commission may:

(1) adopt, amend, and enforce rules pertaining to surface coal mining and reclamation operations consistent with the general intent and purposes of this chapter;

(2) issue permits under this chapter;

(3) conduct hearings under this chapter and Chapter 2001, Government Code;

(4) issue orders requiring an operator to take actions necessary to comply with this chapter or rules adopted under this chapter;

(5) issue orders modifying previous orders;

(6) issue a final order revoking the permit of an operator who has not complied with a commission order to take action required by this chapter or rules adopted under this chapter;

(7) order the immediate cessation of all or part of an ongoing surface coal mining operation if the commission finds that the operation or part of the operation creates an imminent danger to the health or safety of the public or is causing or can reasonably be expected to cause significant imminent harm to land, air, or water resources, and take other action or make changes in a permit that are reasonably necessary to avoid or alleviate those conditions;

(8) hire employees, adopt standards for employment, and hire or authorize the hiring of outside contractors to assist in carrying out this chapter;

(9) enter and inspect, in person or by its agents, a surface mining operation that is subject to this chapter to assure compliance with this chapter;

(10) conduct, encourage, request, and participate in studies, surveys, investigations, research, experiments, training, and demonstrations by contract, grant, or otherwise;

(11) prepare and require permit holders to prepare reports;

(12) accept, receive, and administer grants, gifts, loans, or other money made available from any source for the purposes of this chapter;

(13) take the steps necessary for this state to participate to the fullest extent practicable in the abandoned land program provided by Title IV of the federal Act;

(14) take the actions necessary to establish exclusive jurisdiction over surface coal mining and reclamation in Texas under the provisions of the federal Act, including, if the federal agency disapproves Texas' program as submitted, making recommendations for remedial legislation to clarify, alter, or amend the program to meet the terms of the federal Act;

(15) contract with state boards and agencies that have pertinent expertise to obtain the professional and technical services necessary to carry out this chapter;

(16) establish a process, to avoid duplication, for coordinating the review and issuance of permits for surface coal mining and reclamation operations with any other federal or state permit process applicable to the proposed operations;

(17) enter into cooperative agreements with the secretary of the interior for the regulation of surface coal mining operations on federal land in accordance with the federal Act; and

(18) perform any other duty or act required by or provided for in this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.012. JURISDICTION OF COMMISSION OVER SURFACE COAL, IRON ORE, AND IRON ORE GRAVEL MINING AND RECLAMATION OPERATIONS. (a) The commission has exclusive jurisdiction over:

(1) surface coal mining and reclamation operations in this state; and

(2) iron ore and iron ore gravel mining and reclamation operations in this state.

(b) This chapter governs iron ore and iron ore gravel mining and reclamation operations to the extent it can be made applicable.

(c) The jurisdiction conferred by Subsection (a)(2) does not extend to:

(1) a mining or reclamation activity in progress on or before September 1, 1985; or

(2) a mining operation or reclamation activity that is conducted solely on real property owned in fee simple by the person authorizing the operation or reclamation activity and that is confined to a single, contiguous tract of land, if:

(A) the activity is conducted in an area not larger than 20 acres;

(B) the depth of the mining operation is restricted to 30 inches or less; and

(C) the fee simple owner receives surface damages.

(d) This chapter does not authorize the commission to adjudicate property title or property rights disputes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.013. RULEMAKING AND PERMITTING. (a) The commission shall adopt rules pertaining to surface coal mining and reclamation operations required by this chapter.

(b) The process of making and amending rules and issuing permits is subject to Chapter 2001, Government Code.

(c) A rule or an amended rule adopted or a permit issued by the commission may have different terms for particular conditions, types of coal being extracted, particular areas of the state, or other relevant or necessary conditions if the action taken is consistent with the general intent and purposes of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.014. COAL EXPLORATION OPERATIONS. (a) A person who conducts coal exploration operations that substantially disturb the natural land surface shall comply with commission rules adopted to govern those operations. The rules shall require that before conducting the exploration, a person file with the commission notice of intent to explore and include with the notice:

(1) a description of the exploration area and the period of proposed exploration; and

(2) provisions for reclaiming, in accordance with the performance standards in Sections 134.091 through 134.109, the land disturbed in exploration, including provisions for reclamation of excavations, roads, and drill holes and for removal of necessary facilities and equipment.

(b) A person who conducts coal exploration operations that substantially disturb the natural land surface in violation of this section or a rule adopted under this section is subject to Sections 134.174 through 134.181.

(c) An operator may not remove more than 250 tons of coal under an exploration permit without the specific written approval of the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(d), eff. Sept. 1, 1997.

Sec. 134.015. SURFACE EFFECTS OF UNDERGROUND MINING. (a) The commission shall adopt rules applicable to the surface effects of underground mining that are consistent with the federal Act and regulations adopted under that Act by the secretary of the interior.

(b) This chapter applies to the regulation of the surface effects of underground mining operations as established by Section 516 of the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.016. DEVELOPMENT OF PROCESS FOR DESIGNATING AREAS UNSUITABLE FOR SURFACE COAL MINING. The commission shall develop a process for designating areas unsuitable for surface coal mining. The process shall include:

(1) reviewing surface coal mining land;

(2) developing a data base and an inventory system that will permit proper evaluation of the capacity of different land areas of the state to support and permit reclamation of surface

coal mining operations;

(3) developing, by rule, a method or methods for implementing land use planning decisions about surface coal mining operations; and

(4) developing, by rule, proper notice, provisions, and opportunities for public participation, including a public hearing, before the commission makes a designation or redesignation under Section 134.020.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.017. PETITION FOR DESIGNATION. (a) An affected person is entitled:

(1) before an application is filed under Section 134.052, to petition the commission to designate an area unsuitable for surface coal mining operations; or

(2) to petition the commission to terminate a designation.

(b) The petition shall contain:

(1) allegations of facts; and

(2) supporting evidence that would tend to establish the allegations.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.018. HEARING ON DESIGNATION. (a) Not later than 10 months after the date the commission receives the petition, the commission shall hold a public hearing under Chapter 2001, Government Code, in the locality of the affected area.

(b) After a person has filed a petition under Section 134.017 and before the hearing required by Subsection (a), any person may intervene by filing allegations of facts with supporting evidence that would tend to establish the allegations.

(c) A hearing is not required if all petitioners stipulate agreement before the requested hearing and withdraw their requests. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.019. COMMISSION STATEMENT. Before designating a land area unsuitable for surface coal mining operations, the commission shall prepare a detailed statement on:

(1) the potential coal resources of the area;

(2) the demand for coal resources; and

(3) the impact of the designation on the environment, the economy, and the supply of coal.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.020. DESIGNATION OF AREA AS UNSUITABLE FOR SURFACE COAL MINING. (a) On petition under Section 134.017, the commission shall designate an area unsuitable for all or certain types of surface coal mining operations if the commission determines that reclamation under this chapter is not technologically and economically feasible.

(b) On petition under Section 134.017, the commission may designate a surface area unsuitable for certain types of surface coal mining operations if those operations will:

(1) be incompatible with existing state or local land use plans or programs;

(2) affect fragile or historic land in which the operations could result in significant damage to important historic, cultural, scientific, and aesthetic values and natural systems;

(3) affect renewable resource lands, including aquifers and aquifer recharge areas, in which the operations could result in a substantial loss or reduction of long-range productivity of water supply or of food or fiber products; or

(4) affect natural hazard land, including areas subject to frequent flooding and areas of unstable geology, in which the operations could substantially endanger life and property.

(c) Sections 134.016 through 134.019 and this section do not apply to land:

(1) for which substantial legal and financial commitments in a surface coal mining operation or proposed operation were in existence before January 4, 1977;

(2) on which surface coal mining operations were being conducted on August 3, 1977; or

(3) on which surface coal mining operations are being

conducted under a permit issued under this chapter.  
Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.021. INTEGRATION WITH LAND USE PLANNING AND REGULATION PROCESSES. Determinations of the unsuitability of land for surface coal mining under Sections 134.016 through 134.020 shall be integrated as closely as possible with present and future land use planning and regulation processes at the federal, state, and local levels.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.022. PROHIBITION ON SURFACE COAL MINING IN CERTAIN AREAS. (a) Surface coal mining operations may not be permitted:

(1) that will adversely affect a publicly owned park or place included in the National Register of Historic Sites unless approved jointly by the commission and the federal, state, or local agency with jurisdiction over the park or historic site;

(2) within 100 feet of the outside right-of-way line of a public road, except:

(A) where a mine access road or haulage road joins the right-of-way line; or

(B) as provided by Subsection (b);

(3) within 300 feet of an occupied dwelling, unless the owner of the dwelling waives the prohibition;

(4) within 300 feet of a public, school, church, community, or institutional building;

(5) within 300 feet of a public park; or

(6) within 100 feet of a cemetery.

(b) The commission may permit a public road to be relocated or the area affected by surface coal mining operations to lie within 100 feet of the outside right-of-way line of the public road if, after public notice and opportunity for public hearing in the locality, a written finding is made that the interests of the public and the landowners affected by the relocation will be protected.

(c) This section is subject to rights existing on August 3, 1977, and does not affect surface coal mining operations that existed on August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(e), eff. Sept. 1, 1997.

Sec. 134.023. COOPERATIVE AGREEMENTS WITH FEDERAL GOVERNMENT. The commission may enter into cooperative agreements with the federal government under the federal Act.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.024. EXPERIMENTAL PRACTICES. (a) The commission, with approval by the secretary of agriculture, may authorize experimental departures, in individual cases, from the environmental protection performance standards of this chapter to:

(1) encourage advances in mining and reclamation practices; and

(2) allow postmining land use for industrial, commercial, residential, or public use, including recreational facilities.

(b) The commission may authorize departures if:

(1) the experimental practices are potentially at least as environmentally protective, during and after mining operations, as those required by this chapter;

(2) the mining operations approved for particular land-use or other purposes are not larger or more numerous than necessary to determine the effectiveness and economic feasibility of the experimental practices; and

(3) the experimental practices do not reduce the protection afforded public health and safety below that provided by adopted standards.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.025. CERTIFICATION OF BLASTERS. The commission shall adopt rules requiring the training, examination, and certification of persons engaging in or directly responsible for blasting or the use of explosives in surface coal mining operations.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.026. MONITORING, REPORTING, AND INSPECTIONS. (a)

The commission shall:

- (1) require monitoring and reporting;
- (2) inspect surface coal mining and reclamation operations;
- (3) require the maintenance of signs and markers; and
- (4) take other actions necessary to:
  - (A) administer, enforce, or evaluate the administration of this chapter; or
  - (B) meet the state program requirements of the federal Act.

(b) For purposes of this section, the commission or its authorized representative:

- (1) without advance notice and on presentation of appropriate credentials, has the right to enter:
  - (A) a surface coal mining and reclamation operation; or
  - (B) premises on which records required to be maintained are located; and

(2) at reasonable times and without delay, may have access to and copy records required under this chapter or rules adopted under this chapter or inspect any monitoring equipment or method of operation required under this chapter or rules adopted under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.027. MONITORING OF OPERATIONS THAT AFFECT AQUIFERS. For surface coal mining and reclamation operations that remove or disturb strata that serve as aquifers that significantly ensure the hydrologic balance of water use on or off the mining site, the commission shall specify:

- (1) monitoring sites to record:
  - (A) the quantity and quality of surface drainage above and below the mine site and in the potential zone of influence;

- (B) the level and amount and to take samples of groundwater and aquifers potentially affected by the mining and directly below the lowermost, deepest coal seam to be mined; and

- (C) precipitation; and
- (2) records of well logs and borehole data to be maintained.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.028. INSPECTION PROCEDURE. Inspections by the commission shall:

- (1) occur irregularly, averaging not fewer than one partial inspection each month and one complete inspection each calendar quarter for the surface coal mining and reclamation operation covered by each permit;

- (2) occur without prior notice to the permit holder or the permit holder's agents or employees except for necessary on-site meetings with the permit holder; and

- (3) include filing inspection reports adequate to enforce the requirements of, and to carry out, this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.029. PROCEDURE ON DETECTION OF VIOLATION. On detection of a violation of this chapter, an inspector, in writing, shall:

- (1) promptly inform the operator; and

- (2) report the violation to the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.030. RULES REGARDING MONITORING, REPORTING, AND INSPECTIONS. The commission shall adopt rules for:

- (1) informing an operator of a violation detected by an inspector; and

- (2) making public all inspection and monitoring reports and other records and reports required to be kept under this chapter and rules adopted under this chapter and not confidential under Section 134.031.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.031. CONFIDENTIALITY. (a) Information pertaining to coal seams, test borings, core samplings, or soil samples required by Section 134.052 shall be made available to an affected



person. However, information that pertains only to the analysis of the chemical and physical properties of the coal, except information regarding mineral or chemical content that is potentially toxic in the environment, is confidential and is not a public record.

(b) Information submitted to the commission concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, may not be disclosed by a member, agent, or employee of the commission.

(c) Information submitted to the commission under Section 134.041 concerning mineral deposits, test borings, core samplings, or trade secrets or commercial or financial information relating to the competitive rights of the applicant and specifically identified as confidential by the applicant, if not essential for public review as determined by the commission, may not be disclosed by a member, agent, or employee of the commission. However, information required by another section that must, by the terms of the other section, be on public file or available to an affected person and information about the chemical and physical properties of the coal that relate to mineral or elemental contents that are potentially toxic in the environment is not confidential.

(d) Information submitted to the commission under Section 134.014 as confidential concerning trade secrets or privileged commercial or financial information that relates to the competitive rights of the person intending to explore the described area is not available for public examination.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.032. DETERMINATION REGARDING PRIME FARMLAND. The commission may determine that land is not prime farmland because of its soil type or slope.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

#### SUBCHAPTER C. PLANS

Sec. 134.041. RECLAMATION PLAN. A reclamation plan submitted as part of a permit application shall include, in sufficient detail to demonstrate that reclamation required by this chapter can be accomplished, a statement that:

(1) identifies land subject to the surface coal mining operation over the estimated life of the operation and the size, sequence, and timing of any subareas for which it is anticipated that individual permits for surface coal mining will be sought;

(2) describes the condition of the land to be covered by the permit before any mining, including:

(A) the uses existing at the time of the application and, if the land has a history of mining, the uses that preceded any mining;

(B) the capability of the land before any mining to support a variety of uses, considering soil and foundation characteristics, topography, vegetative cover, and, if applicable, a soil survey prepared under Section 134.052(a)(16);

(C) the productivity of the land before mining, including appropriate classification as prime farmland; and

(D) if the land is classified as prime farmland, the average yield of food, fiber, forage, or wood products obtained from the land under high levels of management;

(3) describes the proposed use of the land after reclamation, including:

(A) a discussion of the utility and capacity of the reclaimed land to support a variety of alternative uses and the relationship of those uses to existing land uses; and

(B) the comments of state and local governments or agencies of state or local government that must approve or authorize the proposed use of the land after reclamation;

(4) describes in detail how the proposed postmining land use is to be achieved and the necessary support activities that may be needed to achieve that use;

(5) specifies the engineering techniques proposed to be used in mining and reclamation and describes the major equipment;

(6) includes a plan for the control of surface water drainage and water accumulation;

(7) includes, if appropriate, a plan for backfilling, soil stabilization and compacting, grading, and appropriate revegetation;

(8) includes a plan for soil reconstruction, replacement, and stabilization under the performance standards in Section 134.092(a)(7) for land identified as prime farmland under Section 134.052(a)(16);

(9) estimates the cost for each acre of the reclamation, including a statement as to how the permit holder plans to comply with each requirement in Sections 134.091 through 134.109;

(10) describes the consideration given to maximizing the use and conservation of the solid fuel resource being recovered so that re-affecting the land in the future can be minimized;

(11) provides an estimated timetable for accomplishing each major step in the reclamation plan;

(12) describes the consideration given to making the surface mining and reclamation operations consistent with surface owner plans and applicable land use plans and programs;

(13) identifies the steps to be taken to comply with applicable air and water quality laws, rules, and regulations and any applicable health and safety standards;

(14) describes the consideration given to developing the reclamation plan in a manner consistent with local physical, environmental, and climatological conditions;

(15) contains the results of test borings the applicant has made at the permit area or other equivalent information in a form satisfactory to the commission, including:

(A) the location of subsurface water; and

(B) an analysis of the chemical properties of the coal and overburden that can be expected to adversely affect the environment;

(16) identifies:

(A) any land contiguous to the area to be covered by the permit, or any interest or option on an interest in the contiguous land, held by the applicant; and

(B) any pending bid by the applicant on an interest in the contiguous land; and

(17) describes in detail the measures to be taken during the mining and reclamation process to assure the protection of:

(A) the quality of surface-water systems and groundwater systems, both on and off the mine site, from adverse effects of the mining and reclamation process;

(B) the rights of present users to surface-water systems and groundwater systems, both on and off the mine site; and

(C) the quantity of surface-water systems and groundwater systems, both on and off the mine site, from adverse effects of the mining and reclamation process, or to provide alternative sources of water where the protection of quantity cannot be assured.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.042. BLASTING PLAN. An applicant for a surface coal mining and reclamation permit shall submit to the commission as part of its application a blasting plan that outlines the procedures and standards by which the operator will comply with Section 134.092(a)(15).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

#### SUBCHAPTER D. SURFACE COAL MINING PERMITS

Sec. 134.051. PERMIT REQUIRED FOR OPERATION. A person may not conduct a surface coal mining operation in this state without first obtaining a permit for that operation from the commission under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.052. CONTENTS OF PERMIT APPLICATION. (a) A permit application must be submitted in a manner satisfactory to the commission and must contain:

(1) the name and address of:

(A) the applicant;

(B) each owner of record of the property to be mined;

(C) each holder of record of any leasehold

interest in the property;

(D) the purchaser of record of the property under a real estate contract;

(E) the operator if the operator is not the applicant;

(F) the principals, officers, and resident agent of a person described by Paragraph (A), (B), (C), (D), or (E) if the person is a business entity other than a sole proprietor; and

(G) the owners of record of the property adjoining the permit area;

(2) a description of any:

(A) current or previous surface coal mining permits held by the applicant; or

(B) other pending application by the applicant;

(3) information about ownership and management of the applicant or operator required by commission rule;

(4) a statement of whether the applicant or a subsidiary, affiliate, or other person controlled by or under common control with the applicant:

(A) has held a federal or state mining permit that has been suspended or revoked in the five years preceding the date the application is submitted and, if so, a brief explanation of the facts involved; or

(B) has forfeited a mining bond or similar security deposited in lieu of bond and, if so, a brief explanation of the facts involved;

(5) a copy of the notice required by Section 134.058;

(6) a description of:

(A) the type and method of the existing or proposed coal mining operation;

(B) the engineering techniques proposed or in use; and

(C) the equipment in use or proposed to be used;

(7) the anticipated or actual starting and termination dates of each phase of the mining operation and number of acres of land to be affected;

(8) an accurate map or plan, to an appropriate scale, clearly showing:

(A) the land to be affected as of the date of the application; and

(B) the area of land in the permit area on which the applicant has the right to enter and begin surface mining operations;

(9) the documents on which the applicant bases the applicant's right to enter and begin surface mining operations on the affected area;

(10) a statement of whether the applicant's right to enter and begin surface mining operations on the affected area is the subject of pending court litigation;

(11) the name of the watershed and location of the surface streams or tributaries into which surface and pit drainage will be discharged;

(12) a determination of the probable hydrologic consequences of the mining and reclamation operation, if any, both on and off the mine site, with respect to the hydrologic regime and the quantity and quality of water in surface-water systems and groundwater systems, including the dissolved and suspended solids under seasonal flow conditions;

(13) sufficient data on the mine site and surrounding areas for the commission to assess the probable cumulative impacts of all anticipated mining in the area on the hydrology of the area, particularly on water availability;

(14) when requested by the commission, the published climatological factors peculiar to the locality of the land to be affected, including:

(A) the average seasonal precipitation;

(B) the average direction and velocity of prevailing winds; and

(C) the seasonal temperature ranges;

(15) a statement of the result of test borings or core samplings from the permit area, including:

(A) logs of the drill holes;

(B) the thickness of the coal seam found;

(C) an analysis of the chemical properties of the coal;

(D) the sulfur content of any coal seam;  
(E) a chemical analysis of any potentially acid-  
or toxic-forming sections of the overburden; and

(F) a chemical analysis of the stratum lying  
immediately underneath the coal to be mined;

(16) for land in the permit application that a  
reconnaissance inspection suggests may be prime farmland, a soil  
survey made or obtained according to standards established by the  
secretary of agriculture to confirm the exact location of the land;

(17) a reclamation plan that complies with this  
chapter;

(18) if applicable, a schedule listing any notices of  
violations as provided by Section 134.068;

(19) a certificate satisfactory to the commission that  
the applicant has a public liability insurance policy as described  
by Section 134.053 in effect for the surface coal mining and  
reclamation operation for which the permit is sought, or evidence  
satisfactory to the commission that the applicant should be allowed  
to be self-insured; and

(20) other data and maps the commission requires by  
rule.

(b) A determination under Subsection (a)(12) may not be  
required until the time that hydrologic information on the general  
area before mining is made available from an appropriate state  
agency, but the permit may not be approved until the information is  
available and has been incorporated into the application.

(c) The commission may waive Subsection (a)(15) for a  
particular application if the commission determines in writing that  
the information is unnecessary.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,  
1995.

Sec. 134.053. LIABILITY INSURANCE POLICY. (a) The public  
liability insurance policy required by Section 134.052(a)(19)  
shall provide for personal injury and property damage protection in  
an amount adequate to compensate a person who is:

(1) damaged as a result of the surface coal mining and  
reclamation operations, including the use of explosives; and

(2) entitled to compensation under state law.

(b) The policy shall be maintained in effect during the term  
of the permit and any renewal for the entire period in which  
reclamation operations are conducted.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,  
1995.

Sec. 134.054. APPLICATION FEES. (a) An application for a  
surface mining permit or for renewal or revision of a surface mining  
permit must be accompanied by an application fee determined by the  
commission in accordance with a published fee schedule. The  
commission shall base the application fee as nearly as possible on  
the actual or anticipated cost of reviewing the application.

(b) The application fee may not be less than:

(1) \$5,000 for an initial surface mining permit;

(2) \$3,000 for renewal of a surface mining permit; or

(3) \$500 for revision of a surface mining permit.

(c) The initial application fee and the application fee for  
renewal of a surface mining permit may be paid in equal annual  
installments during the term of the permit.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,  
1995.

Sec. 134.055. ANNUAL FEES. (a) In addition to the  
application fees required by Section 134.054, each permit holder  
shall pay to the commission the following annual fees:

(1) a fee for each acre of land in the permit area on  
which the permit holder actually conducted operations for removing  
coal during the year;

(2) a fee for each acre of land in the bonded permit  
area on December 31 of the year; and

(3) a fee for the permit if the permit was in effect on  
December 31 of the year.

(b) A fee under Subsection (a) is due not later than March 15  
of the year following the year for which the fee was imposed.

(c) The commission shall determine the amount of each fee  
under Subsection (a).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,  
1995. Amended by Acts 2005, 79th Leg., ch. 179, Sec. 1, eff. Sept.  
1, 2005.

Sec. 134.056. SMALL MINE EXEMPTION. The commission shall designate a qualified public or private laboratory to prepare the determination of probable hydrologic consequences and statement of the results of test borings or core samplings required by Section 134.052 and shall pay the costs of preparing the determination and statement if:

(1) a surface coal mining operator makes a request in writing; and

(2) the commission finds that the probable total annual production at all locations of the surface coal mining operator will not exceed 300,000 tons.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1307, Sec. 1, eff. Sept. 1, 1997.

Sec. 134.057. PUBLIC INSPECTION OF APPLICATION. (a) An applicant for a surface coal mining and reclamation permit shall file a copy of the application for public inspection with the county clerk of the county in which the mining is proposed to occur. This subsection does not apply to information in the application pertaining to the coal seam itself.

(b) Copies of any records, reports, inspection materials, or information obtained under this chapter by the commission shall be made immediately available to the public at central and sufficient locations in the county, multicounty, and state area of mining so that they are conveniently available to residents in the areas of mining. This subsection does not apply to records, reports, inspection materials, or information that is confidential under Section 134.031.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.058. NOTICE BY APPLICANT. At the time the applicant submits an application for a surface coal mining and reclamation permit or renewal of an existing permit, the applicant shall publish an advertisement in a newspaper of general circulation in the locality of the proposed surface coal mining operation at least once a week for four consecutive weeks that:

(1) shows the ownership and describes the location and boundaries of the proposed site sufficiently so that the proposed operation can be readily located; and

(2) states that the application is available for public inspection at the county courthouse of the county in which the property lies.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.059. NOTIFICATION BY COMMISSION. (a) The commission shall notify local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality of a proposed surface coal mining operation that the operator intends to conduct a surface mining operation.

(b) The notice shall indicate the application number and the county courthouse in which a copy of the proposed surface coal mining and reclamation plan can be inspected.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.060. COMMENTS. (a) During a period established by the commission, a local body, agency, authority, or company described by Section 134.059 may submit written comments on the effect of the proposed operation on the environment in the entity's area of responsibility.

(b) The commission shall immediately send the comments to the applicant.

(c) The comments shall be made available to the public at the same location as the mining application.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.061. WRITTEN OBJECTIONS. (a) Not later than the 30th day after the date of the last publication of notice under Section 134.058, an affected person or a federal, state, or local governmental agency or authority is entitled to file with the commission written objections to a proposed initial or revised application for a surface coal mining and reclamation operation permit.

(b) The commission shall immediately send the objections to the applicant.

(c) The objections shall be made available to the public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.062. REQUEST FOR PUBLIC HEARING; NOTICE. (a) Not later than the 45th day after the date of the last publication of notice under Section 134.058, the applicant or an affected person may request a hearing on the application. The hearing shall be held not later than the 30th day after the date the commission receives the request.

(b) The commission shall publish notice of the date, time, and location of the public hearing in a local newspaper of general circulation in the locality of the proposed surface coal mining operations at least once a week for three consecutive weeks before the scheduled hearing date.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.063. NOTICE OF APPROVAL OR DENIAL. The commission shall notify the applicant and any objector that the permit application has been approved or denied:

(1) within the time provided by Chapter 2001, Government Code, if a public hearing is held under Section 134.062; or

(2) not later than the 45th day after the date of the last publication of notice of application if a public hearing is not held.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.064. PROCEDURE. Chapter 2001, Government Code, applies to a permit application under this chapter. Notice of hearing and appeal is governed by that chapter, except as provided by Section 134.062.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.065. PERMIT APPROVAL OR DENIAL. (a) On the basis of a complete application for a surface coal mining and reclamation permit or a revision or renewal of a permit, as required by this chapter, the commission shall grant, require modification of, or deny a permit application.

(b) The commission shall notify the applicant of its decision in writing within a reasonable time as set by the commission.

(c) An applicant for a permit or a permit revision has the burden of establishing that the application complies with this chapter.

(d) Not later than the 10th day after the date the commission grants a permit, the commission shall notify the county judge in the county in which the land to be affected is located that a permit has been issued and shall describe the location of the land.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.066. WRITTEN FINDINGS REQUIRED. (a) The commission may not approve an application for a permit or a permit revision unless it finds, in writing, using the information in the application or information otherwise available that will be documented in the approval and made available to the applicant, that:

(1) the application is accurate and complete and complies with this chapter;

(2) the applicant has demonstrated that the reclamation required by this chapter can be accomplished under the reclamation plan contained in the application;

(3) the commission has assessed the probable cumulative impact that all anticipated surface coal mining in the area will have on the hydrologic balance, and the proposed operation has been designed to prevent material damage to the hydrologic balance outside the permit area;

(4) the area proposed to be mined is not included in an area:

(A) designated unsuitable for surface coal mining under this chapter; or

(B) under study for this designation in an administrative proceeding begun under this chapter;

(5) the proposed surface coal mining operation, if located west of the 100th meridian west longitude, will not:

(A) interrupt, discontinue, or preclude farming

on alluvial valley floors that are irrigated or naturally subirrigated, excluding:

(i) undeveloped rangeland that is not significant to farming on the alluvial valley floors; and

(ii) land on which the commission finds that the farming to be interrupted, discontinued, or precluded is of such small acreage as to have negligible impact on the farm's agricultural production; or

(B) materially damage the quantity or quality of water in surface or underground water systems that supply those valley floors; and

(6) the applicant has submitted to the commission, if the ownership of the coal has been severed from the private surface estate:

(A) the surface owner's written consent to the extraction of coal by surface mining methods; or

(B) a conveyance that expressly grants or reserves the right to extract the coal by surface mining methods.

(b) Subsection (a)(4)(B) does not apply to an area as to which an administrative proceeding has begun if the applicant demonstrates that, before January 1, 1977, the applicant made substantial legal and financial commitments in relation to the operation for which the applicant is applying for a permit.

(c) Subsection (a)(5) does not apply to a surface coal mining operation that in the year preceding May 9, 1979:

(1) produced coal in commercial quantities and was located in or adjacent to alluvial valley floors; or

(2) had obtained specific permit approval by the commission to conduct surface coal mining operations in the alluvial valley floors.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.067. DETERMINATION OF OWNERSHIP. If the ownership of the coal has been severed from the private surface estate by a conveyance that does not expressly grant the right to extract coal by surface mining methods, the surface-subsurface legal relationship shall be determined in accordance with state law.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.068. SCHEDULE OF NOTICES OF VIOLATIONS. (a) The applicant shall file with the application a schedule listing any notices of violations of this chapter, the federal Act, a federal regulation or federal or state program adopted under the federal Act, or another law, rule, or regulation of the United States, this state, or a department or agency in the United States pertaining to air or water environmental protection incurred by the applicant in connection with a surface coal mining operation during the three years before the application date.

(b) The schedule must indicate the final resolution of any notice of violation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(f), eff. Sept. 1, 1997.

Sec. 134.069. EFFECT OF PAST OR PRESENT VIOLATION. (a) If the schedule under Section 134.068 or other information available to the commission indicates that a surface coal mining operation owned or controlled by the applicant is currently in violation of this chapter or another law referred to in Section 134.068, the commission may not issue a permit until the applicant submits proof that the violation has been corrected or is being corrected to the satisfaction of the commission, department, or agency with jurisdiction over the violation.

(b) The commission may not issue a permit to an applicant if it finds, after opportunity for hearing, that the applicant or operator specified in the application controls or has controlled mining operations with a demonstrated pattern of wilful violations of this chapter or another law referred to in Section 134.068 that, by their nature and duration and the resulting irreparable damage to the environment, indicate an intent not to comply with this chapter or another law referred to in that section.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995; Acts 1997, 75th Leg., ch. 165, Sec. 25.01(f), eff. Sept. 1, 1997.

Sec. 134.070. PERMIT FOR MINING ON PRIME FARMLAND. (a) After consulting with the secretary of agriculture and under

regulations issued under the federal Act by the secretary of the interior with the concurrence of the secretary of agriculture, the commission shall grant a permit to mine on prime farmland if:

(1) the area proposed to be mined contains prime farmland;

(2) the commission makes the findings required by Section 134.066 for the application under consideration; and

(3) the commission in addition finds in writing that:

(A) the operator has the technological capability to restore the mined area within a reasonable time to a level of yield equal to or higher than that of nonmined prime farmland in the surrounding area under equivalent levels of management; and

(B) the applicant can meet the soil reconstruction standards of the federal Act.

(b) This section does not apply to:

(1) a permit issued before August 3, 1977;

(2) a revision or renewal of a permit issued before August 3, 1977; or

(3) an existing surface mining operation for which a permit was issued before August 3, 1977.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.071. TERM. (a) A permit is issued for a term not to exceed five years.

(b) The commission may grant a permit for a specified longer term if:

(1) an applicant demonstrates that a specified longer term is reasonably needed to allow the applicant to obtain necessary financing for equipment or the opening of the operation; and

(2) the application for the specified longer term is complete.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.072. TERMINATION ON FAILURE TO BEGIN OPERATIONS. (a) A permit terminates if the permit holder has not begun the surface coal mining operation covered by the permit on or before the third anniversary of the date on which the period for which the permit is issued begins.

(b) The commission may grant reasonable extensions of time on a showing that the extensions are necessary because of:

(1) litigation that precludes the beginning of operations or threatens substantial economic loss to the permit holder; or

(2) conditions beyond the control and without the fault or negligence of the permit holder.

(c) With respect to coal to be mined for use in a synthetic fuel facility or specific major electric generating facility, a permit holder is considered to have begun surface mining operations at the time the construction of the facility is initiated.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.073. SUCCESSOR IN INTEREST. A successor in interest to a permit holder may continue the surface coal mining and reclamation plan of the original permit holder until the successor's application is granted or denied if the successor:

(1) applies for a new permit not later than the 30th day after the date the person succeeds to the interest; and

(2) is able to obtain the same bond coverage as the original permit holder.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.074. RIGHT TO RENEWAL. A permit issued under this chapter carries with it the right of successive renewal on expiration for areas within the boundaries of the existing permit.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.075. APPLICATION FOR AND ISSUANCE OF RENEWAL. (a) A permit holder may apply for renewal.

(b) After the public notice requirements of Sections 134.058 through 134.062 have been met, the commission shall renew the permit unless the opponents of renewal establish and the commission makes written findings that:

(1) the terms of the existing permit are not being



satisfactorily met;

(2) the present surface coal mining and reclamation operation does not comply with the environmental protection standards of this chapter;

(3) the requested renewal substantially jeopardizes the operator's continuing responsibility for existing permit areas;

(4) the operator has not provided evidence that the performance bond in effect for the operation and any additional bond the commission may require under Section 134.121 will continue in effect for the renewal requested in the application; or

(5) additional revised or updated information required by the commission has not been provided.

(c) Before renewing a permit, the commission shall notify the appropriate public authorities.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.076. EXTENSION OF PERMIT AREA. (a) Except for incidental boundary revisions, an extension of the permit area must be made by application for another permit.

(b) If an application for renewal of an existing permit includes a proposal to extend the mining operation beyond the boundaries authorized in the permit, the part of the application that addresses new land areas must meet all standards applicable to a new application under this chapter.

(c) Notwithstanding Subsection (b), if the surface coal mining operations authorized by the existing permit are not subject to the standards contained in Section 134.066(a)(5), the part of the application for renewal that addresses new land areas previously identified in the reclamation plan submitted under Section 134.041 is not subject to those standards.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.077. TERM OF RENEWAL PERMIT. A permit renewal is for a term not to exceed the term of the original permit established by this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.078. TIME LIMIT FOR RENEWAL APPLICATION. Application for permit renewal must be made not later than the 120th day before the date the existing permit expires.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.079. APPLICATION FOR PERMIT REVISION. During the term of a permit, the permit holder may submit to the commission an application for a permit revision, together with a revised reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.080. APPROVAL OR DISAPPROVAL OF PERMIT REVISION. (a) The commission may not approve an application for a permit revision unless the commission finds that reclamation as required by this chapter can be accomplished under the revised reclamation plan.

(b) The commission shall approve or disapprove the revision not later than the 90th day after the date the permit holder submits the application to the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.081. GUIDELINES FOR REVISION. (a) The commission shall establish guidelines for determining the scale or extent of a revision request for which all permit application information requirements and procedures, including notice and hearings, apply.

(b) A revision that proposes significant alterations in the reclamation plan is subject at a minimum to notice and hearing requirements.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.082. COMMISSION REQUIREMENT OF PERMIT REVISION OR MODIFICATION. (a) The commission, within a time prescribed by rule, shall review outstanding permits and may require reasonable revision or modification of a permit during the term of the permit.

(b) A revision or modification must be supported by a written finding and is subject to the notice and hearing requirements of Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.083. TRANSFER OF PERMIT. A person may not transfer, assign, or sell the rights granted under a permit issued under this chapter without the written approval of the commission. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.084. SUSPENSION OR RESCISSION OF IMPROVIDENTLY ISSUED PERMIT. (a) The commission may suspend or rescind an improvidently issued permit under rules adopted by the commission.

(b) A rule adopted by the commission under this section must be consistent with and not less effective than a regulation adopted under the federal Act.

(c) Except as provided by Subsection (d), Chapter 2001, Government Code, does not apply to an action by the commission under this section to suspend or rescind an improvidently issued permit.

(d) A permit holder who is given notice of suspension or rescission of an improvidently issued permit under this section may file an appeal for administrative review of the notice as provided by commission rules. The review is governed by Chapter 2001, Government Code.

Added by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(g), eff. Sept. 1, 1997.

#### SUBCHAPTER E. PERFORMANCE STANDARDS

Sec. 134.091. OPERATIONS REQUIRED TO MEET PERFORMANCE STANDARDS. A permit issued under this chapter to conduct surface coal mining operations shall require that the operations meet the applicable performance standards of this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.092. PERFORMANCE STANDARDS. (a) Performance standards for surface coal mining and reclamation operations shall require an operator:

(1) to conduct surface coal mining operations to maximize the use and conservation of the solid fuel resource being recovered so that re-affecting the land in the future through surface coal mining can be minimized;

(2) to restore the land affected to a condition capable of supporting the uses that it could support before mining or reasonably likely higher or better uses if:

(A) the uses do not present an actual or probable hazard to public health or safety or pose an actual or probable threat of water diminution or pollution; and

(B) the permit applicant's declared proposed land use following reclamation:

(i) is not considered impractical or unreasonable;

(ii) is not inconsistent with applicable land use policies and plans;

(iii) does not involve unreasonable delay in implementation; and

(iv) does not violate federal, state, or local law;

(3) except as provided by Sections 134.093(b), 134.094(b), and 134.107, to backfill, compact where advisable to ensure stability or to prevent leaching of toxic materials, and grade to restore the approximate original contour of the land with all highwalls, spoil piles, and depressions eliminated, unless small depressions are needed to retain moisture to assist revegetation or as otherwise authorized under this chapter;

(4) to stabilize and protect the surface areas, including spoil piles affected by the surface coal mining and reclamation operation, for effective control of erosion and attendant air and water pollution;

(5) to remove the topsoil from the land in a separate layer and replace it on the backfill area or, if the topsoil is not used immediately, to segregate it in a separate pile from other spoil;

(6) to restore the topsoil or the best available subsoil that is best able to support vegetation;

(7) for prime farmland to be mined and reclaimed, at a minimum:

(A) to segregate the A horizon of the natural soil, unless it can be shown that other available soil materials will create a final soil having a greater productive capacity, and,

if this material is not used immediately, to stockpile it separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic materials;

(B) to segregate the B horizon of the natural soil, underlying C horizons or other strata, or a combination of those horizons or other strata that are shown to be texturally and chemically suitable for plant growth and that can be shown to be equally or more favorable for plant growth than the B horizon, in sufficient quantities to create in the regraded final soil a root zone of a depth and quality comparable to that which existed in the natural soil and, if this material is not used immediately, to stockpile it separately from other spoil and provide needed protection from wind and water erosion or contamination by other acid or toxic material;

(C) to replace and regrade the root zone material described by Subdivision (7)(B) with proper compaction and uniform depth over the regraded spoil material; and

(D) to redistribute and grade uniformly the surface soil horizon described by Subdivision (7)(A);

(8) to create a permanent impoundment of water on a mining site as part of a reclamation activity if:

(A) the approved mining and reclamation plan and permit authorize impoundment; and

(B) it is adequately demonstrated that:

(i) the size of the impoundment is adequate for its intended purposes;

(ii) the impoundment dam construction will be designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under the Watershed Protection and Flood Prevention Act (16 U.S.C. Section 1001 et seq.);

(iii) the quality of impounded water will be permanently suitable for its intended use;

(iv) discharges from the impoundment will not degrade the water quality in the receiving stream below water quality standards established under applicable federal and state law;

(v) the water level will be reasonably stable;

(vi) final grading will provide adequate safety and access for proposed water users; and

(vii) the impoundment will not reduce the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses;

(9) to conduct any augering operation associated with surface mining so as to maximize recoverability of coal reserves remaining after the operation and reclamation are complete and to seal the auger holes with an impervious and noncombustible material to prevent drainage unless the commission determines that the resulting impoundment of water in the auger holes may create a hazard to the environment or the public health or safety;

(10) to minimize disturbances to the prevailing hydrologic balance at the mine site in associated offsite areas and to the quality and quantity of water in surface-water systems and groundwater systems both during and after surface coal mining operations and during reclamation by:

(A) avoiding acid or other toxic mine drainage by measures including:

(i) preventing water from contacting or removing water from contact with toxic-producing deposits;

(ii) treating drainage to reduce toxic content that adversely affects downstream water when the drainage is released to a watercourse; or

(iii) casing, sealing, or otherwise managing boreholes, shafts, and wells and keeping acid or other toxic drainage from entering surface water and groundwater;

(B) conducting surface coal mining operations to:

(i) prevent, to the extent possible using the best technology currently available, additional contributions of suspended solids to streamflow or runoff outside the permit area; and

(ii) prevent those contributions from

exceeding requirements set by applicable state or federal law;

(C) constructing any siltation structures under Paragraph (B) before beginning surface coal mining operations;

(D) cleaning out and removing temporary or large settling ponds or other siltation structures from drainways after disturbed areas are revegetated and stabilized and depositing the silt and debris at a site and in a manner approved by the commission;

(E) restoring the recharge capacity of the mined area to approximate premining conditions;

(F) avoiding channel deepening or enlargement in operations requiring the discharge of water from a mine;

(G) preserving throughout the mining and reclamation process the essential hydrologic functions of alluvial valley floors in the arid and semiarid areas of the country; and

(H) performing other actions the commission prescribes;

(11) with respect to surface disposal of mine wastes, tailings, coal processing wastes, and other wastes in areas other than the mine workings or excavations:

(A) to stabilize the waste piles in designated areas through construction in compacted layers including the use of incombustible and impervious materials, if necessary; and

(B) to assure that the final contour of the waste pile will be compatible with natural surroundings and that the site can and will be stabilized and revegetated according to this chapter;

(12) to refrain from surface coal mining within 500 feet of an active or abandoned underground mine to prevent a breakthrough and to protect the health or safety of miners;

(13) to design, locate, construct, operate, maintain, enlarge, modify, and remove or abandon, in accordance with the standards developed under commission rule, existing and new coal mine waste piles used temporarily or permanently as dams or embankments;

(14) to ensure that debris, acid-forming materials, toxic materials, or materials constituting a fire hazard are treated, buried and compacted, or otherwise disposed of in a manner designed to prevent contamination of surface water or groundwater and that contingency plans are developed to prevent sustained combustion;

(15) to ensure that explosives are used in accordance with state and federal law, including commission rules;

(16) to ensure that reclamation efforts proceed in an environmentally sound manner and as contemporaneously as practicable with the surface coal mining operations;

(17) to ensure that the construction, maintenance, and postmining conditions of access roads into and across the site of operations will control or prevent:

(A) erosion and siltation;

(B) water pollution; and

(C) damage to:

(i) fish or wildlife or their habitat; or

(ii) public or private property;

(18) to refrain from constructing roads or other access ways up a stream bed or drainage channel or so near the channel as to seriously alter the normal flow of water;

(19) to establish on regraded areas and other affected land a diverse, effective, and permanent vegetative cover:

(A) of the seasonal variety native to the area of land to be affected;

(B) capable of self-regeneration and plant succession; and

(C) at least equal in extent of cover to the natural vegetation of the area;

(20) to assume responsibility for successful revegetation as required by Subdivision (19) for five years after the last year of augmented seeding, fertilizing, irrigation, or other work in order to assure compliance with that subsection;

(21) to protect off-site areas from slides or damage occurring during the surface coal mining and reclamation operations and to refrain from depositing spoil material or locating any part of the operations or waste accumulations outside the permit area;

(22) to place the excess spoil material resulting from surface coal mining and reclamation activities in accordance with

Section 134.106;

(23) to meet other standards necessary to achieve reclamation in accordance with the purposes of this chapter, considering the physical, climatological, and other characteristics of the site;

(24) to the extent possible, using the best technology currently available, to minimize disturbance and adverse impacts of the operation on fish, wildlife, and related environmental values and to enhance those resources where practicable; and

(25) to provide an undisturbed natural barrier beginning at the elevation of the lowest coal seam to be mined and extending from the outslope for the distance the commission determines shall be retained in place as a barrier to slides and erosion.

(b) In Subsection (a)(13), "coal mine waste piles" means piles consisting of mine wastes, tailings, coal processing wastes, or other liquid and solid wastes.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(h), eff. Sept. 1, 1997.

Sec. 134.093. BACKFILLING, GRADING, AND COMPACTING: INSUFFICIENT OVERBURDEN. (a) This section applies to a surface coal mining operation:

(1) that is carried out at the same location over a substantial period;

(2) that transects the coal deposit;

(3) in which the thickness of the coal deposit relative to the volume of the overburden is large; and

(4) for which the operator demonstrates that the overburden and other spoil and waste materials at a particular point in the permit area or otherwise available from the entire permit area are insufficient, considering volumetric expansion, to restore the approximate original contour.

(b) Notwithstanding Section 134.092(a)(3), the operator, at a minimum, shall backfill, grade, and compact, where advisable, using the available overburden and other spoil and waste materials to attain the lowest practicable grade but not more than the angle of repose, to provide adequate drainage, and to cover the acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.094. BACKFILLING, GRADING, AND COMPACTING: SUFFICIENT OVERBURDEN. (a) This section applies to a surface coal mining operation:

(1) in which the volume of overburden is large relative to the thickness of the coal deposit; and

(2) for which the operator demonstrates that because of volumetric expansion the amount of overburden and other spoil and waste materials removed in the course of the mining operation is more than sufficient to restore the approximate original contour.

(b) Notwithstanding Section 134.092(a)(3), the operator shall, after restoring the approximate contour, backfill, grade, and compact, where advisable, the excess overburden and other spoil and waste materials to attain the lowest grade but not more than the angle of repose and to cover the acid-forming and other toxic materials in order to achieve an ecologically sound land use compatible with the surrounding region. The overburden or spoil shall be shaped and graded to prevent slides, erosion, and water pollution and shall be revegetated in accordance with this chapter. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.095. MAINTENANCE OF TOPSOIL OR OTHER STRATA. (a) The performance standards shall require that, if the topsoil is not replaced on a backfill area within a time short enough to avoid deterioration of the topsoil, the operator shall maintain a successful cover by quick-growing plant or other means so that the topsoil:

(1) is preserved from wind and water erosion;

(2) remains free of contamination by other acid or toxic material; and

(3) is in a usable condition for sustaining vegetation when restored during reclamation.

(b) The performance standards shall require that, if topsoil is of insufficient quantity or of poor quality for

sustaining vegetation requirements or if other strata can be shown to be more suitable for vegetation requirements, the operator shall remove, segregate, and preserve in the manner provided by Section 134.092(a)(5) and Subsection (a) the other strata that are best able to support vegetation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.096. SPECIFICATIONS FOR SOIL REMOVAL, STORAGE, REPLACEMENT, AND RECONSTRUCTION. For prime farmland to be mined and reclaimed, the applicable specifications for soil removal, storage, replacement, and reconstruction are those established by the secretary of agriculture.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.097. REMOVAL, STORAGE, AND REPLACEMENT OF SOIL AND OVERBURDEN WITHOUT REGARD TO SOIL HORIZONS. (a) This section applies only to prime farmland to be mined and reclaimed.

(b) On proper documentation supporting the use of the mining technique to obtain crop yields equivalent to or higher than yields on surrounding nonmined soil of the same type, the commission may authorize the permit holder, without regard to soil horizons, to:

(1) remove the soil and overburden in one step;

(2) store the soil and overburden in one stockpile;  
and

(3) begin reclamation by replacing and grading the stockpile material.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.098. PROHIBITION ON AUGERING. The commission may prohibit augering if necessary to:

(1) maximize the use, recoverability, or conservation of the solid fuel resources; or

(2) protect against adverse water quality impacts.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.099. CERTIFICATION OF SILTATION STRUCTURE. The performance standards shall require that a siltation structure constructed under Section 134.092(a)(10)(B) be certified by a qualified registered engineer to be constructed as designed and as approved in the reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.100. PROXIMITY OF MINE TO UNDERGROUND MINES: EXCEPTION. Notwithstanding Section 134.092(a)(12), the commission shall permit an operator to mine near or through an abandoned underground mine or closer to an active underground mine than allowed by that section if:

(1) the nature, timing, and sequencing of the approximate coincidence of specific surface mine activities with specific underground mine activities are jointly approved by the regulatory authorities concerned with surface mine regulation and the health and safety of underground miners; and

(2) the operations will result in:

(A) improved resource recovery;

(B) abatement of water pollution; or

(C) elimination of hazards to the health and safety of the public.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.101. RULES REGARDING USE OF EXPLOSIVES. The commission rules described by Section 134.092(a)(15) shall require that:

(1) adequate advance written notice be given to local governments and residents who might be affected by the use of the explosives, by:

(A) publishing the planned blasting schedule in a newspaper of general circulation in the locality;

(B) mailing a copy of the proposed blasting schedule to each resident living within one-half mile of the proposed blasting site; and

(C) providing daily notice to residents in the area before blasting;

(2) a log be maintained for at least three years and made available for public inspection on request, detailing:

(A) the location of the blasts;

(B) the pattern and depth of the drill holes;  
 (C) the amount of explosives used for each hole;  
 and  
 (D) the order and length of delay in the blasts;  
 (3) the type of explosives and detonating equipment and the size, timing, and frequency of blasts be limited according to the physical conditions of the site to prevent:  
 (A) injury to persons;  
 (B) damage to public and private property outside the permit area;  
 (C) adverse impacts on an underground mine; and  
 (D) change in the course, channel, or availability of groundwater or surface water outside the permit area;  
 (4) blasting operations be conducted by trained and competent persons certified by the commission; and  
 (5) on the request of a resident or owner of a man-made structure within one-half mile of the permit area, the applicant or permit holder:  
 (A) conduct a preblasting survey of the structures in an area to be decided by the commission; and  
 (B) submit the survey to the commission with a copy to the resident or owner making the request.  
 Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.102. VARIANCE TO PERMIT UNDERGROUND MINING OPERATIONS BEFORE RECLAMATION. (a) The commission may grant a variance from the contemporaneous reclamation requirement of Section 134.092(a)(16) for specific areas within the reclamation plan to permit underground mining operations before reclamation if:

(1) the applicant proposes to combine surface mining operations with underground mining operations to assure maximum practical recovery of the coal resources; and

(2) the commission finds in writing that:

(A) the applicant has presented, as part of the permit application, specific, feasible plans for the proposed underground mining operations;

(B) the proposed underground mining operations are necessary or desirable to assure maximum practical recovery of the coal resource and will avoid multiple disturbances of the surface;

(C) the applicant has satisfactorily demonstrated that:

(i) the plan for the underground mining operations conforms to requirements for underground mining in the jurisdiction; and

(ii) permits necessary for the underground mining operations have been issued by the appropriate authority;

(D) the applicant has shown that the areas proposed for the variance are necessary for implementing the proposed underground mining operations;

(E) substantial environmental damage, either on or off the site, will not result from the delay in completing reclamation as required by this chapter; and

(F) provisions for the off-site storage of spoil will comply with Section 134.106.

(b) Liability under the bond filed by the applicant with the commission under Section 134.121 must extend for the duration of the underground mining operations and until Sections 134.092 through 134.106 and Sections 134.128 through 134.134 have been complied with.

(c) The commission must adopt specific rules to govern the granting of a variance under this section and may impose additional requirements it considers necessary.

(d) The commission shall review a variance granted under this section not later than the third anniversary of the date the permit is issued.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.103. USE OF INTRODUCED SPECIES FOR REVEGETATION. Notwithstanding Section 134.092(a)(19), introduced species may be used in the revegetation process where necessary to achieve the approved postmining land use plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.104. RESPONSIBILITY FOR REVEGETATION: AREA OF LOW PRECIPITATION. Notwithstanding Section 134.092(a)(20), in areas or regions of the state where the annual average precipitation is 26 inches or less, an operator's assumption of responsibility and liability extends for 10 years after the last year of augmented seeding, fertilizing, irrigation, or other work. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.105. RESPONSIBILITY FOR REVEGETATION: LONG-TERM INTENSIVE AGRICULTURAL POSTMINING USE. (a) The applicable five-year or 10-year period of responsibility for revegetation begins on the date of initial planting for long-term intensive agricultural postmining land use if the commission approves a long-term intensive agricultural postmining land use.

(b) The commission may grant an exception to Section 134.092(a)(19) if the commission issues a written finding approving a long-term intensive agricultural postmining land use as part of the mining and reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.106. SPOIL DISPOSAL. (a) The performance standards shall require an operator:

(1) to transport the excess spoil material resulting from surface coal mining and reclamation activities and place it in a controlled manner in position for concurrent compaction to assure mass stability and to prevent mass movement;

(2) to dispose of spoil only within the bonded permit areas;

(3) to remove the organic matter immediately before spoil placement;

(4) to use appropriate surface and internal drainage systems and diversion ditches to prevent spoil erosion and movement;

(5) to use a spoil disposal area that does not contain springs, natural watercourses, or wet weather seeps unless lateral drains are constructed from the wet areas to the main underdrains in a manner that prevents the water from filtering into the spoil pile;

(6) if the spoil is placed on a slope:

(A) to place the spoil on the most moderate slope among the slopes on which, in the judgment of the commission, the spoil could be placed in compliance with this chapter; and

(B) where possible, to place the spoil on or above a natural terrace, bench, or berm if that placement provides additional stability and prevents mass movement;

(7) to construct a rock toe buttress of sufficient size to prevent mass movement if the toe of the spoil rests on a downslope; and

(8) to place the spoil in compliance with other provisions of this chapter.

(b) The final configuration of the spoil disposal area shall be compatible with the natural drainage pattern and surroundings and suitable for intended uses.

(c) The design of the spoil disposal area shall be certified by a qualified registered professional engineer in conformance with professional standards.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.107. PERMIT WITHOUT REGARD TO REQUIREMENT TO RESTORE TO APPROXIMATE ORIGINAL CONTOUR. (a) The commission may grant a permit, without regard to the requirement to restore to approximate original contour set forth in Section 134.092(a)(3) or 134.108(a)(2), for the surface mining of coal if:

(1) the mining operation will remove an entire coal seam or seams running through the upper fraction of a mountain, ridge, or hill, except as provided by Subsection (b)(1), by removing the overburden and creating a level plateau or a gently rolling contour that has no highwalls remaining and that can support postmining uses in accord with this section;

(2) an industrial, commercial, agricultural, residential, or public facility use, including use as a recreational facility, is proposed for the postmining use of affected land;

(3) after consultation with the appropriate land use planning agencies, if any, the proposed postmining land use is considered to constitute an economic or public use of the affected



land equal to or better than premining use;

(4) the applicant presents specific plans for the proposed postmining land use and appropriate assurances that the use will be:

- (A) compatible with adjacent land uses;
- (B) obtainable according to data regarding expected need and market;
- (C) assured of investment in necessary public facilities;
- (D) supported by commitments from public agencies, where appropriate;
- (E) practicable with respect to private financial capability for completion of the proposed use;
- (F) planned under a schedule attached to the reclamation plan so as to integrate the mining operation and reclamation with the postmining land use; and
- (G) designed by a registered engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site;

(5) the proposed use is consistent with adjacent land uses and existing state and local land use plans and programs;

(6) the commission provides the county in which the land is located and any state or federal agency that the commission, in its discretion, determines to have an interest in the proposed use an opportunity of not more than 60 days to review and comment on the proposed use; and

(7) the other requirements of this chapter are met.

(b) In granting a permit under this section, the commission shall require that:

(1) the toe of the lowest coal seam and the associated overburden are retained in place as a barrier to slides and erosion;

(2) the reclaimed area is stable;

(3) the resulting plateau or rolling contour drains inward from the outslopes except at specified points;

(4) natural watercourses are not damaged;

(5) spoil is placed on the mountaintop bench as necessary to achieve the planned postmining land use and any excess spoil material not retained on the mountaintop is placed in accordance with Section 134.106;

(6) the stability of the spoil retained on the mountaintop is ensured; and

(7) the other requirements of this chapter are met.

(c) The commission shall adopt specific rules to govern the granting of permits under this section and may impose additional requirements it considers necessary.

(d) A permit granted under this section shall be reviewed not later than the third anniversary of the date the permit is issued unless the applicant demonstrates that the proposed development is proceeding in accordance with the terms of the approved schedule and reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.108. STEEP SLOPE SURFACE COAL MINING. (a) An operator of a steep slope surface coal mining operation, in addition to meeting the general performance standards of this subchapter:

(1) shall ensure that during surface coal mining on steep slopes, debris, abandoned or disabled equipment, spoil material, or waste mineral matter is not placed on the downslope below the bench or mining cut;

(2) shall backfill with spoil material to:

(A) return the site to the approximate original contour; and

(B) maintain the stability of the material after mining and reclamation; and

(3) may not disturb land above the top of the highwall.

(b) Notwithstanding Subsection (a)(1), the operator shall permanently store under Section 134.106 spoil material in excess of that required to reconstruct the approximate original contour under Section 134.092(a)(3) or Subsection (a)(2).

(c) Notwithstanding Subsection (a)(3), the operator may disturb land above the top of the highwall if the commission finds that the disturbance will facilitate compliance with the environmental protection standards of this subchapter. The amount

of land disturbed above the highwall may not exceed the amount necessary to facilitate the compliance.

(d) This section does not apply to an operator who:

(1) is mining on flat or gently rolling terrain on which an occasional steep slope is encountered through which the mining operations are to proceed, leaving a plain or predominantly flat area; or

(2) meets the requirements of Section 134.107.

(e) In this section, "steep slope" means a slope:

(1) that exceeds 20 degrees; or

(2) less than or equal to 20 degrees determined by the commission to be a steep slope after considering soil, climate, or other characteristics of the region or the state.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.109. VARIANCE FROM REQUIREMENT TO RESTORE CONTOUR. (a) The commission may grant a variance from the requirement in Section 134.108(a)(2) to restore to approximate original contour after steep slope surface coal mining if:

(1) the surface owner requests in writing, as part of the permit application, that the variance be granted to render the land suitable after reclamation for industrial, commercial, residential, or public use, including use as a recreational facility;

(2) the watershed control of the affected area is improved; and

(3) other requirements of this section are met.

(b) The watershed control of an affected area is considered to be improved for purposes of Subsection (a) if the potential use of the affected land is:

(1) considered by the commission, after consultation with the appropriate land use planning agencies, if any, to constitute an economic or public use equal to or better than the premining use;

(2) designed and certified by a qualified registered professional engineer in conformance with professional standards established to assure the stability, drainage, and configuration necessary for the intended use of the site; and

(3) approved by the appropriate state environmental agencies.

(c) In granting a variance under this section, the commission shall require the operator to:

(1) backfill with spoil material to cover the highwall completely and ensure that the material maintains stability after mining and reclamation;

(2) place off the mine bench only the amount of spoil necessary to achieve the planned postmining land use;

(3) comply with Section 134.106 in placing spoil off the mine bench;

(4) ensure stability of the spoil retained on the bench; and

(5) meet the other requirements of this chapter.

(d) The commission shall adopt specific rules to govern the granting of variances under this section and may impose additional requirements it considers necessary.

(e) A variance granted under this section shall be reviewed not later than the third anniversary of the date the permit is issued unless the permit holder demonstrates that the proposed development is proceeding in accordance with the terms of the reclamation plan.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.110. WATER SUPPLY REPLACEMENT. The operator of a surface coal mining operation shall replace the water supply of an owner of an interest in real property who obtains all or part of the owner's supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source if the supply has been affected by contamination, diminution, or interruption proximately resulting from the surface coal mining operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

#### SUBCHAPTER F. BONDS AND DEPOSITS

Sec. 134.121. PERFORMANCE BOND REQUIREMENT. (a) After a surface coal mining and reclamation permit application has been

approved but before the permit is issued, the applicant shall file with the commission, on a form prescribed and furnished by the commission, a performance bond payable to this state and conditioned on the faithful performance of the requirements of this chapter and the permit.

(b) The bond shall cover the area of land in the permit area on which the applicant will begin and conduct surface coal mining and reclamation operations during the initial term of the permit.

(c) The permit holder shall provide an additional bond or bonds to cover a succeeding increment of surface coal mining and reclamation operations conducted in the permit area at the time the increment begins.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.122. AMOUNT OF BOND. (a) The commission shall determine the amount of the bond required for each bonded area.

(b) The amount of the bond shall:

(1) reflect the probable difficulty of the reclamation, considering factors including:

(A) topography;

(B) geology of the site;

(C) hydrology; and

(D) revegetation potential; and

(2) be sufficient to assure completion of the reclamation plan if the commission has to perform the work in the event of forfeiture.

(c) The bond for the entire area under one permit may not be less than \$10,000.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.123. BOND WITHOUT SURETY. The commission may accept the bond of an applicant without separate surety if the applicant demonstrates to the satisfaction of the commission the existence of a suitable and continuous operation sufficient for authorization to self-insure or bond the amount.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.124. ALTERNATIVE TO BONDING PROGRAM. Instead of establishing a bonding program under this subchapter, the commission may approve an alternative system that will achieve the purposes of the bonding program under this subchapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.125. EXTENT OF LIABILITY UNDER BOND. Liability under the bond shall be for the duration of the surface coal mining and reclamation operation and of the applicant's responsibility for revegetation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.126. SECURITY FOR BOND. (a) The applicant and a corporate surety licensed to do business in this state shall execute the bond unless the applicant elects to deposit security under Subsection (b).

(b) The applicant may elect to deposit as security for the performance of the applicant's obligations under the bond:

(1) cash;

(2) negotiable bonds of the United States government or the state; or

(3) negotiable certificates of deposit of a bank organized or transacting business in the United States.

(c) The cash deposit or market value of the securities deposited under Subsection (b) must equal or exceed the amount of the bond required for the bonded area.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.127. ADJUSTMENT OF AMOUNT OF BOND OR DEPOSIT. The commission periodically shall adjust the amount of the bond or deposit required and the terms of each acceptance of the applicant's bond to reflect changes in:

(1) the acreage affected; or

(2) the cost of future reclamation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.128. APPLICATION FOR RELEASE OF BOND OR DEPOSIT. The permit holder may file a request with the commission

for the release of all or part of a performance bond or deposit.  
Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.129. NOTICE. (a) Not later than the 30th day after the date the permit holder files with the commission an application for release of a bond or deposit, the permit holder shall submit a copy of an advertisement placed at least once a week for four consecutive weeks in a newspaper of general circulation in the locality of the surface coal mining operation. The advertisement is part of a bond release application and shall:

- (1) identify the precise location of the land affected;
- (2) state the number of acres;
- (3) identify the permit and the date the permit was approved;
- (4) state the amount of the bond filed and the portion sought to be released;
- (5) describe the type and give appropriate dates of reclamation work performed; and
- (6) describe the results achieved as they relate to the permit holder's reclamation plan.

(b) As part of a bond release application, the applicant shall submit copies of letters the applicant has sent to adjoining property owners, local governmental bodies, planning agencies, and sewage and water treatment authorities in the locality, as the commission directs, notifying them of the applicant's intention to seek release from the bond.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.130. INSPECTION AND EVALUATION. (a) Not later than the 30th day after the date the commission receives a request under Section 134.128 and a copy of an advertisement or letters under Section 134.129, the commission shall inspect and evaluate the reclamation work involved.

(b) The evaluation shall consider, among other things:

- (1) the degree of difficulty in completing any remaining reclamation;
- (2) whether pollution of surface and subsurface water is occurring;
- (3) the probability that pollution will continue to occur in the future; and
- (4) the estimated cost of abating the pollution.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.131. RELEASE OF BOND OR DEPOSIT. (a) The commission may release part or all of the bond or deposit if the commission is satisfied that the reclamation covered by the bond or deposit or part of the reclamation has been accomplished as required by this chapter according to the schedule provided by this section.

(b) The commission may release 60 percent of the bond or deposit for the applicable permit area if the permit holder completes the backfilling, regrading, and drainage control of a bonded area in accordance with the reclamation plan.

(c) The commission may release part of the bond after successful revegetation has been established on the regraded mined lands in accordance with the reclamation plan. In determining the amount of the bond to be released under this subsection, the commission shall retain, for the period of permit holder responsibility specified under Section 134.092(a)(20), 134.104, or 134.105, a bond amount for the revegetated area that is sufficient for a third party to establish revegetation.

(d) The commission may not release any of the bond or deposit under Subsection (c) if:

(1) the land to which the release would apply is contributing suspended solids to streamflow or runoff outside the permit area in excess of the requirements of Section 134.092(a)(10); or

(2) soil productivity for prime farmland has not returned to levels of yield equivalent to those of nonmined land of the same soil type in the surrounding area under equivalent management practices, as determined from the soil survey performed under Section 134.052(a)(16).

(e) If a silt dam will be retained as a permanent impoundment under Section 134.092(a)(8), the commission may

release the part of the bond authorized by Subsection (c) after provisions for sound future maintenance have been made with the commission.

(f) The commission may release the remaining part of the bond if:

(1) the permit holder has successfully completed all surface coal mining and reclamation activities;

(2) the period of permit holder responsibility specified under Section 134.092(a)(20), 134.104, or 134.105 has expired; and

(3) all reclamation requirements of this chapter have been met.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.132. NOTICE TO PERMIT HOLDER OF DECISION TO APPROVE OR DISAPPROVE RELEASE. (a) The commission shall notify the permit holder in writing of its decision to release or not to release all or part of the bond or deposit:

(1) not later than the 60th day after the date the request is filed if a public hearing is not held; or

(2) not later than the 30th day after the date of the hearing if a public hearing is held.

(b) If the commission disapproves the application for release of all or part of the bond, it shall notify the permit holder, in writing:

(1) stating the reasons for disapproval;

(2) recommending corrective actions necessary to secure the release; and

(3) allowing opportunity for a public hearing.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.133. NOTICE TO COUNTY JUDGE. Not later than the 31st day before the date of release of all or part of a bond, the commission, by certified mail, shall notify the county judge of any county in which the surface coal mining operation is located that an application for the release has been filed with the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.134. OBJECTIONS TO RELEASE. (a) A person is entitled to file a written objection to a proposed release of a bond if the person:

(1) has a legal interest that might be adversely affected by release of the bond; or

(2) is the responsible officer or head of a federal, state, or local governmental agency that:

(A) has jurisdiction by law or has special expertise with respect to an environmental, social, or economic impact involved in the mining operation; or

(B) is authorized to develop and enforce environmental standards with respect to the operation.

(b) Objections must be filed with the commission not later than the 30th day after the date of the last publication of the notice under Section 134.129.

(c) If a written objection is filed and a public hearing is requested, not later than the 30th day after the date the hearing is requested the commission shall:

(1) inform the interested parties of the time and place of the hearing; and

(2) hold the hearing in the locality of the surface coal mining operation or at the state capital, at the option of the person objecting to the proposed release.

(d) The commission shall advertise the date, time, and location of the hearing in a newspaper of general circulation in the locality of the surface coal mining operation for two consecutive weeks.

(e) The hearing and any appeal shall be conducted under Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

#### SUBCHAPTER G. ABANDONED MINE RECLAMATION

Sec. 134.141. FUND PARTICIPATION. (a) The commission may take any action necessary to:

(1) ensure this state's participation to the fullest extent practicable in the abandoned mine reclamation fund established by the federal Act; and

(2) act as this state's agency for that participation.  
(b) Under the federal Act, the commission by rule shall:  
(1) establish priorities that meet the terms of that Act for the expenditure of money in the fund;  
(2) designate the land and water eligible for reclamation or abatement expenditures;  
(3) submit reclamation plans, annual projects, and applications to the appropriate authorities under that Act; and  
(4) administer money received for abandoned mine reclamation or related purposes.  
Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.142. ELIGIBILITY OF LAND AND WATER. Land and water are eligible for reclamation or abatement expenditures under this subchapter if the land and water are eligible for reclamation or abatement expenditures under the federal Act.  
Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 1307, Sec. 1, eff. Sept. 1, 1997.

Sec. 134.143. RIGHT OF ENTRY. The commission is entitled to enter any property to conduct studies or exploratory work to determine:

(1) the existence of adverse effects of past coal mining practices; and

(2) the feasibility of restoration, reclamation, abatement, control, or prevention of those adverse effects.  
Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.144. RECLAMATION BY COMMISSION. (a) The commission is entitled to enter property adversely affected by past coal mining practices or other property necessary to have access to that property to do the things necessary or expedient to restore, reclaim, abate, control, or prevent the adverse effects if the commission:

(1) makes a finding of fact that:

(A) land or water resources have been adversely affected by past coal mining practices;

(B) the adverse effects are at a stage at which, in the public interest, action to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices should be taken; and

(C) the owners of the land or water resources where entry must be made to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices:

(i) are not known or readily available; or

(ii) will not permit this state or a political subdivision to enter the property to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices; and

(2) gives notice by mail to the owners, if known, or, if not known, by posting notice on the premises and advertising once in a newspaper of general circulation in the county in which the land lies.

(b) The money expended for the work and the benefits accruing to the premises entered are chargeable against the land and mitigate or offset a claim for, or an action brought by an owner of an interest in the premises for, damages from the entry. This subsection does not create a new right of action or eliminate an existing immunity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.145. ACQUISITION. This state may acquire by purchase, donation, or condemnation land that is adversely affected by past coal mining practices if:

(1) it is in the public interest; and

(2) the commission determines that:

(A) acquiring the land is necessary for successful reclamation;

(B) the acquired land, after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, will:

(i) serve recreational and historical purposes;

(ii) serve conservation and reclamation purposes; or

(iii) provide open space benefits; and  
(C) permanent facilities such as a treatment plant or a relocated stream channel will be constructed on the land for the restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices, acquisition of coal refuse disposal sites and the coal refuse on those sites will serve the purposes of this section, or public ownership is desirable to meet emergency situations and prevent recurrences of the adverse effects of past coal mining practices. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.146. TITLE. Title to land acquired under Section 134.145 shall be in the name of this state. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.147. COST OF LAND. The price paid for land acquired under Section 134.145 shall reflect the market value of the land as adversely affected by past coal mining practices. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.148. SALE OF ACQUIRED LAND. (a) If land acquired under Section 134.145 is considered suitable for industrial, commercial, residential, or recreational development, this state may sell the land by public sale under a system of competitive bidding at not less than fair market value and under rules adopted to ensure that the land is put to proper use consistent with local plans, if any, as determined by the commission.

(b) The land may be sold only when authorized by the secretary of the interior if federal money was involved in the acquisition of the land to be sold. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.149. HEARING ON SALE. (a) The commission, after appropriate public notice and on request, shall hold a public hearing in the county or counties in which land acquired under Section 134.145 is located.

(b) The hearing shall be held at a time that gives residents and local governments maximum opportunity to participate in the decision about the use or disposition of the land after restoration, reclamation, abatement, control, or prevention of the adverse effects of past coal mining practices. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.150. LIEN. (a) Not later than six months after the date projects to reclaim privately owned land are completed, the commission:

(1) shall itemize the money spent; and  
(2) may file a statement of the money spent with the clerk of the county in which the land lies, together with a notarized appraisal by an independent appraiser of the value of the land before the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices if the money spent will result in a significant increase in property value.

(b) The statement is a lien on the land second only to a property tax lien. The amount of the lien may not exceed the amount determined by either of two appraisals to be the increase in the market value of the land as a result of the restoration, reclamation, abatement, control, or prevention of the adverse effects of past mining practices.

(c) A lien may not be filed under this section against the property of a person who:

(1) owned the surface before May 2, 1977; and  
(2) did not consent to, participate in, or exercise control over the mining operation that necessitated the reclamation performed under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.151. HEARING ON LIEN. Not later than the 60th day after the date the lien is filed, an affected landowner may petition the commission for a hearing on the amount of the lien. The hearing and any appeal shall be conducted under Chapter 2001, Government Code. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.152. EMERGENCY POWERS. (a) The commission may spend money available for abandoned mine reclamation for the emergency restoration, reclamation, abatement, control, or prevention of the adverse effects of coal mining practices on eligible land and water if the commission finds that:

(1) an emergency exists constituting a danger to the public health, safety, or general welfare; and

(2) there is not another person who will act expeditiously to restore, reclaim, abate, control, or prevent the adverse effects of past coal mining practices.

(b) The commission may enter land where an emergency exists and other land necessary to have access to that land to:

(1) restore, reclaim, abate, control, or prevent the adverse effects of coal mining practices; and

(2) do the things necessary or expedient to protect the public health, safety, or general welfare.

(c) Entry under this section is an exercise of the police power and not an act of condemnation of property or trespass.

(d) Money spent under this section and the benefits accruing to the premises entered are chargeable against the land and mitigate or offset a claim for, or an action brought by an owner of an interest in the premises for, damages by virtue of the entry. This subsection does not create a new right of action or eliminate an existing immunity.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

#### SUBCHAPTER H. ENFORCEMENT

Sec. 134.161. CONDITION, PRACTICE, OR VIOLATION CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) The commission or its authorized representative shall immediately order the cessation of surface coal mining operations or the relevant part of those operations if, after an inspection, the commission or its authorized representative determines that:

(1) a condition exists, a practice exists, or a violation of this chapter or a permit condition required by this chapter exists; and

(2) the condition, practice, or violation:

(A) creates an imminent danger to the health or safety of the public; or

(B) is causing or can reasonably be expected to cause significant imminent environmental harm to land, air, or water resources.

(b) The commission, in addition to the cessation order, shall require the operator to take any steps the commission considers necessary to completely abate the imminent danger to health or safety or significant imminent environmental harm if the commission finds that the ordered cessation will not completely abate the imminent danger or environmental harm.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.162. VIOLATION NOT CREATING IMMINENT DANGER OR CAUSING IMMINENT HARM. (a) The commission or its authorized representative shall issue a notice to a permit holder who is violating this chapter or a permit condition required by this chapter and shall set a reasonable time not to exceed 90 days for abating the violation if, after an inspection, the commission or its authorized representative determines that:

(1) the permit holder is violating this chapter or a permit condition required by this chapter; and

(2) the violation:

(A) does not create an imminent danger to the health or safety of the public; and

(B) is not causing or reasonably expected to cause significant imminent environmental harm to land, air, or water resources.

(b) The commission or its authorized representative shall order a cessation of surface mining operations or the part of the operations relevant to the violation if:

(1) the time for abatement, as originally set or subsequently extended, expires;

(2) the commission or its authorized representative shows good cause; and

(3) the commission or its authorized representative finds in writing that the violation has not been abated.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,



1995.

Sec. 134.163. TERM OF CESSATION ORDER. Except as provided by Section 134.167, a cessation order under Section 134.161 or 134.162 remains in effect until the commission:

(1) determines the condition, practice, or violation has been abated; or

(2) modifies, vacates, or terminates the order under Section 134.166.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995. Amended by Acts 1997, 75th Leg., ch. 165, Sec. 25.01(i), eff. Sept. 1, 1997.

Sec. 134.164. CONTINUOUS VIOLATION. (a) The commission shall issue an order to a permit holder promptly to show cause why a permit should not be suspended or revoked if, after an inspection:

(1) the commission has reason to believe that a pattern of violations of this chapter or of permit conditions required by this chapter exists or has existed; and

(2) the commission or its authorized representative finds that the violations are:

(A) caused by the unwarranted failure of the permit holder to comply with this chapter or the permit conditions; or

(B) wilfully caused by the permit holder.

(b) The order shall set a time, place, and date for a public hearing. The hearing is of record and is subject to Chapter 2001, Government Code.

(c) The commission shall promptly suspend or revoke the permit if the permit holder does not show cause why the permit should not be suspended or revoked.

(d) The permit holder shall immediately stop surface coal mining operations on the permit area and shall complete reclamation within a time specified by the commission if the commission revokes the permit. The commission shall declare the performance bonds for the operation forfeited if the permit holder fails to comply with this subsection.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.165. FORM OF NOTICE OR ORDER. (a) A notice or order issued under Section 134.161, 134.162, or 134.164 shall:

(1) state with reasonable specificity the nature of the violation and the remedial action required;

(2) state the time established for abatement; and

(3) reasonably describe the part of the surface coal mining and reclamation operation to which the notice or order applies.

(b) The commission or its authorized representative shall promptly give the notice or order to the permit holder or the permit holder's agent.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.166. MODIFICATION, VACATION, OR TERMINATION OF NOTICE OF ORDER. The commission or its authorized representative may modify, vacate, or terminate a notice or order issued under Section 134.161, 134.162, or 134.164.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.167. EXPIRATION OF NOTICE OR ORDER. If a notice or order issued under Section 134.161, 134.162, or 134.164 requires the operator to stop mining, the notice or order expires not later than the 30th day after the date of actual notice to the operator unless a public hearing is held at or reasonably near the site so that the site can be viewed during the hearing.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.168. APPLICATION FOR COMMISSION REVIEW OF NOTICE OR ORDER. (a) A permit holder to whom the commission issues a notice or order under Section 134.161 or 134.162 or an affected person may apply to the commission for review of the notice or order not later than the 30th day after the date of receipt of the notice or order or the date the notice or order is modified, vacated, or terminated.

(b) The filing of an application for review under this section does not stay a notice or order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.169. INVESTIGATION AND HEARING ON APPLICATION FOR

REVIEW. (a) On receipt of an application filed under Section 134.168, the commission shall investigate as it considers appropriate.

(b) The investigation shall provide an opportunity for a public hearing, at the request of the applicant or the affected person, to enable the applicant or the person to present information relating to the issuance and continuance of the notice or order or the modification, vacation, or termination of the notice or order.

(c) The permit holder and other affected persons shall be given written notice of the time and place of the hearing not later than the sixth day before the date of the hearing.

(d) The hearing is of record and is subject to Chapter 2001, Government Code.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.170. COMMISSION FINDINGS AND DECISION. (a) On receiving the investigation report, the commission shall:

- (1) make findings of fact; and
- (2) issue a written decision incorporating:
  - (A) its findings; and
  - (B) an order vacating, affirming, modifying, or terminating:
    - (i) the notice or order; or
    - (ii) the modification, vacation, or termination of the notice or order.

(b) If the application for review concerns a cessation order issued under Section 134.161 or 134.162, the commission shall issue the written decision not later than the 30th day after the date it receives the application for review unless it grants temporary relief under Section 134.171.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.171. REQUEST FOR TEMPORARY RELIEF. (a) Before the investigation and hearing required by Section 134.169 are completed, the applicant may file with the commission a written request that the commission grant temporary relief from a notice or order issued under Section 134.161 or 134.162, together with a detailed statement giving reasons for granting the relief.

(b) The commission shall promptly issue an order or decision granting or denying the relief. If the applicant requests relief from a cessation order issued under Section 134.161 or 134.162, the order or decision on the request shall be issued not later than the fifth day after the date the request is received.

(c) The commission may grant the relief, under conditions prescribed by the commission, if:

- (1) a hearing has been held:
  - (A) in the locality of the permit area on the request for temporary relief; and
  - (B) in which all parties have had an opportunity to be heard;
- (2) the applicant shows that there is a substantial likelihood that the findings of the commission will favor the applicant; and
- (3) the relief will not:
  - (A) adversely affect the health or safety of the public; or
  - (B) cause significant, imminent environmental harm to land, air, or water resources.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.172. ASSESSMENT OF COSTS INCURRED IN ADMINISTRATIVE PROCEEDING OR JUDICIAL REVIEW. (a) If the commission issues an order under Sections 134.161 through 134.171 or in an administrative proceeding under this chapter, the commission may, on request of any person, assess against the person to whom the order is issued or the commission the costs and expenses, including attorney's fees, that the commission determines the requestor reasonably incurred in connection with the requestor's participation in the action or proceeding.

(b) If the commission issues an order under Sections 134.161 through 134.171 or in an administrative proceeding under this chapter and the commission's decision is appealed, the court may, on request of any person, assess against the person to whom the order is issued or the commission the costs and expenses, including

attorney's fees, that the commission determines the requestor reasonably incurred in connection with the requestor's participation in judicial review of the action or proceeding. Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.173. CIVIL ACTION. (a) The commission may request the attorney general to institute a civil action for relief, including a permanent or temporary injunction, restraining order, or other appropriate order, if the permit holder:

(1) violates, fails, or refuses to comply with an order or decision issued by the commission under this chapter;

(2) interferes with, hinders, or delays the commission or its authorized representative in carrying out Sections 134.161 through 134.172;

(3) refuses to admit an authorized representative to the mine;

(4) refuses to allow an authorized representative to inspect the mine;

(5) refuses to furnish information or a report requested by the commission under the commission's rules; or

(6) refuses to allow access to and copying of records the commission determines reasonably necessary to carry out this chapter.

(b) The action shall be brought in a district court in Travis County or in the county in which the greater part of the surface mining and reclamation operation is located.

(c) The court has jurisdiction to provide appropriate relief.

(d) Relief granted by the court to enforce Subsection (a)(1) continues in effect until the earlier of the date on which:

(1) all proceedings for review of the order are completed or finally terminated; or

(2) the court sets aside or modifies the order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.174. ADMINISTRATIVE PENALTY FOR VIOLATION OF PERMIT CONDITION OF THIS CHAPTER. (a) The commission may assess an administrative penalty against a person who violates a permit condition or this chapter. The commission shall assess an administrative penalty if the violation leads to the issuance of a cessation order.

(b) The penalty may not exceed \$5,000 for each violation. Each day a violation continues may be considered a separate violation for purposes of penalty assessments.

(c) In determining the amount of the penalty, the commission shall consider:

(1) the person's history of violations at the particular surface coal mining operation;

(2) the seriousness of the violation, including:

(A) any irreparable harm to the environment; and

(B) any hazard to the health or safety of the public;

(3) whether the person was negligent; and

(4) the demonstrated good faith of the person in attempting to comply rapidly after notification of the violation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.175. PENALTY ASSESSMENT PROCEDURE. (a) The commission may assess an administrative penalty under Section 134.174 only after giving the person charged with a violation an opportunity for a public hearing.

(b) If a public hearing is held, the commission shall make findings of fact and issue a written decision as to the occurrence of the violation and the amount of the penalty. The decision shall incorporate, if appropriate, an order to pay the penalty.

(c) If appropriate, the commission shall consolidate the hearing with other proceedings under Sections 134.161 through 134.173. A hearing under this section is of record and is subject to Chapter 2001, Government Code.

(d) If the person does not take the opportunity for a public hearing, the commission may assess an administrative penalty after determining that a violation has occurred and the amount of the penalty. The commission shall then issue an order to pay the penalty.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1,

1995.

Sec. 134.176. PAYMENT OF PENALTY; REFUND. (a) Not later than the 30th day after the date the commission issues a notice or order charging that a violation of this chapter has occurred, the commission shall inform the person charged of the proposed amount of the penalty.

(b) Not later than the 30th day after the date the person is informed under Subsection (a), the person shall:

(1) pay the proposed penalty in full; or

(2) forward the proposed amount to the commission for placement in an escrow account if the person wishes to contest the amount of the penalty or the fact of the violation.

(c) If administrative or judicial review of the proposed penalty determines that a violation did not occur or that the amount of the penalty should be reduced, the commission, not later than the 30th day after the date of the determination, shall remit the appropriate amount to the person, with interest at the prevailing United States Department of the Treasury rate.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.177. ADMINISTRATIVE PENALTY FOR FAILING TO CORRECT VIOLATION FOR WHICH CITATION HAS BEEN ISSUED. (a) The commission shall assess a person who does not correct a violation for which a citation has been issued under Section 134.161 within the time permitted for its correction an administrative penalty of not less than \$750 for each day the violation continues after that time.

(b) If the person initiates a review proceeding in which the commission orders, after an expedited hearing, the suspension of the abatement requirements of the citation after determining that the person will suffer irreparable loss or damage from the application of those requirements, the period during which the person must correct the violation before the commission may impose an administrative penalty under this section expires when the commission enters a final order.

(c) If the person initiates a review proceeding in which a court orders the suspension of an abatement requirement of the citation, the period during which the person must correct the violation before the commission may impose an administrative penalty under this section expires when the court enters an order.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.178. RECOVERY OF ADMINISTRATIVE PENALTY. The attorney general at the request of the commission may bring a civil action to recover an administrative penalty owed under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.179. CRIMINAL PENALTY FOR WILFUL AND KNOWING VIOLATION. (a) A person commits an offense if the person wilfully and knowingly violates a condition of a permit issued under this chapter or does not comply with an order issued under this chapter, except an order incorporated in a decision issued by the commission under Section 134.175.

(b) An offense under this section is punishable by:

(1) a fine of not more than \$10,000;

(2) imprisonment for not more than one year; or

(3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.180. CRIMINAL PENALTY FOR FALSE STATEMENT, REPRESENTATION, OR CERTIFICATION. (a) A person commits an offense if the person knowingly makes a false statement, representation, or certification, or knowingly fails to make a statement, representation, or certification, in an application, record, report, or other document filed or required to be maintained under this chapter or under an order of decision issued by the commission under this chapter.

(b) An offense under this section is punishable by:

(1) a fine of not more than \$10,000;

(2) imprisonment for not more than one year; or

(3) both the fine and the imprisonment.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.181. PENALTY FOR DIRECTOR, OFFICER, OR AGENT OF CORPORATION. (a) If a corporation violates a condition of a permit

issued under this chapter or does not comply with an order issued under Section 134.161, 134.162, 134.164, 134.166, 134.170, 134.171, 134.172, or 134.173 or an order incorporated in a final decision issued by the commission under this chapter, a director, officer, or agent of the corporation who wilfully and knowingly authorized, ordered, or carried out the violation or noncompliance is subject to the same administrative penalties, fines, and imprisonment that may be imposed under Sections 134.174 and 134.179.

(b) Subsection (a) does not apply to the violation of an order incorporated in a decision issued by the commission under Section 134.175.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.182. CITIZEN SUIT. (a) Except as provided by Subsection (d), an affected person may bring a civil action to compel compliance with this chapter against:

(1) the commission if the person alleges the commission did not perform a nondiscretionary act under this chapter;

(2) a state governmental instrumentality or agency if the person alleges the instrumentality or agency is violating this chapter or a rule, order, or permit adopted or issued under this chapter; or

(3) any other person if the person alleges the other person is violating a rule, order, or permit adopted or issued under this chapter.

(b) A person who is injured or whose property is damaged by a permit holder's violation of a rule, order, or permit adopted or issued under this chapter may bring an action for damages, including reasonable attorney's and expert witness's fees.

(c) Subsection (b) does not affect the rights established by or limits imposed under the workers' compensation laws of this state.

(d) A person may not bring an action under Subsection (a)(2) or (3) if the state has brought and is diligently prosecuting a civil action in state or federal court to require compliance with this chapter or a rule, order, or permit adopted or issued under this chapter.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.183. NOTICE TO COMMISSION BEFORE BRINGING SUIT; SUIT BY STATE. (a) A person must give written notice to the commission of an action under Section 134.182(a)(1) not later than the 61st day before the date the person brings the action.

(b) The person must give notice under Subsection (a) as prescribed by commission rule.

(c) The person may bring the action immediately after notifying the commission if the violation or order complained of:

(1) constitutes an imminent threat to the health or safety of the person; or

(2) would immediately affect a legal interest of the person.

(d) A person must give written notice of the violation to the commission and any alleged violator not later than the 61st day before the date the person brings an action under Section 134.182(a)(2) or (3).

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.184. VENUE. A person may bring an action under Section 134.182 only in the judicial district in which the surface coal mining operation complained of is located.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.185. INTERVENTION BY COMMISSION. The commission may intervene as a matter of right in an action brought under Section 134.182.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.186. COSTS OF SUIT; FILING OF BOND. (a) In issuing a final order in an action brought under Section 134.182(a), a court may award a party litigation costs, including attorney's and expert witness's fees, if the court determines the award is appropriate.

(b) The court may require a person to file a bond or equivalent security in accordance with the Texas Rules of Civil

Procedure if the person seeks a temporary restraining order or preliminary injunction.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.187. RIGHTS UNDER OTHER LAW. Sections 134.182 through 134.186 do not restrict any right a person or class of persons may have under a statute or common law to seek enforcement of this chapter and rules adopted under this chapter or to seek other relief, including relief against the commission.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.

Sec. 134.188. DEFENSE. It is a defense to a civil or criminal penalty under this chapter that a person allegedly conducting an iron ore or iron ore gravel mining and reclamation operation in violation of this chapter has a written general warranty of ownership of land, separate from any lease, from the person authorizing the operation.

Added by Acts 1995, 74th Leg., ch. 76, Sec. 12.02(a), eff. Sept. 1, 1995.